IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.**1520** OF **1996**

1(a) Smt. Shantaben N. Shah
aged 80 years,
widow of late Naginda H. Shah

1(b) Smt. Vershaben H. Doshi

Both Bombay Indian Inhabitants,
residing at Raj Bhavan,
314, Sardar V.P. Road,
Mumbai 400 004. ...Petitioners.

Versus

1. The Secretary,
Food & Civil Supplies Department,
Mantralaya, Bombay.

2. The Secretary,
Indsutrial & Labour Department,
Mantralaya, Bombay.

3. The State of Maharashtra

4. The Smt. Jayaben Sureshchandra
Pethani Sarvodaya Education Trust,
Raj Bhavan, Khetwadi, 7th Lane,
Bombay - 400 004. .....Respondents.

Shri R.A. Rodrigues i/b Betty D'Souza for the petitioners.

Shri A.A. Kumbhakoni, Associate Advocate General with Shri R.J. Mane, AGP for the respondent Nos. 1 to 3.

Shri S.C. Gupta with Shri B.V. Bhagat i/b Mr. J.N. Mehta for the respondent No.4.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 18th October, 2005.

ORAL JUDGMENT (Per R.M.S. Khandeparkar, J.)

1. Heard.

2. By the present petition, the petitioners are seeking for direction to the respondents to forthwith vacate the suit premises and hand over the possession thereof to the petitioners as also for direction to pay the arrears of rent. The premises comprise of Shop No.7, situated in a building called 'Raj Bhavan' at 314, Sardar V.P. Road, Mumbai - 400 004. The case of the petitioners is that the said building was purchased by the petitioners some times in the year 1949 from its erstwhile owners. The premises in question were already requisitioned by the Government for the purpose of establishing a Government Grain Shop. Sometimes in 1966, the petitioners informed the respondent Nos. 1 to 3 about acquisition of ownership of the said building by the petitioners and entitlement for collection of the rent. The same was followed by the request on behalf of the petitioners for derequisition of the said premises in terms of

assurance given in that regard to the erstwhile owners in the year 1957. However, there was no favourable response from the respondents in that regard. As there was failure in respect of payment of rent, the predecessors of the petitioners had filed a suit being Suit No. 819 of 1963 in the Bombay City Civil Court, which was subsequently withdrawn in the year 1970. In spite of withdrawal thereof, the respondents continued to make default in payment of rent till 1974. However, the arrears were cleared in the year 1974. Though, in 1974, the petitioners were informed that the amount of rent would be paid directly by the government allottees to the landlords of the premises, the respondents continued to commit default in payment of rent. On 25/08/1994, the petitioners received two cheques, alongwith a forwarding letter, allegedly towards the rent in respect of the suit premises. As the petitioners were surprised to receive the said letter from respondent No.4 who had no concern with the suit premises, according to the petitioners, the said cheques were returned to respondent No.4 on 05/12/1994, simultaneously denying the claim of respondent No.4 to be the tenant in respect of the suit premises. The petitioners also wrote a letter dated 14/12/1994 to the Controller of Accommodation for derequisition of the suit premises. The

respondent No.4, however, again, alongwith the letter dated 12/10/1995 forwarded three cheques towards the rent in respect of the suit premises. The same were also returned to the respondent No.4 under letter dated 31/10/1995. It is the case of the petitioners that in the facts and circumstances of the case the premises being no longer required for the purpose for which they were sought to be requisitioned i.e. for the Government Grain Shop, the respondents cannot continue to insist for retaining the premises in their possession and, therefore, are bound to derequisition the same and deliver vacant possession thereof to the petitioners along with the payment of arrears of rent.

3. The respondent Nos. 1 to 3 in their affidavit in reply have stated that the premises were requisitioned before 1949 for storage of grains and, after 1950, the said Rationing Shop was given by the Government to Sarvodaya Womens Industrial Co-operative Society and that respondent No.4 is not the original allottee nor the premises are used for storage of food grains.

4. The Managing Trustee of Sarvodaya Educational Trust by name Shri Virendra Parikh in his affidavit filed on behalf of respondent No.4, has stated that the respondent Nos. 1 to 3 had allotted the premises

to Sarvodaya Womens Industrial Co-operative Society Limited and the said Society is the proprietor of Sarvodaya K.G. and pre-primary school and that the said Society had created a Trust by name 'Sarvodaya Educational Trust' for conducting and managing the said school and to carry out the educational activities. The premises, pursuant to the requisition, were allotted to the said Society for running grain shop and the said Society, apart from running the said grain shop, has been conducting pre-primary and primary school in the suit premises. According to the respondent No.4, a letter dated 19/03/1990 was addressed by the respondent Nos. 1 to 3 to the petitioner - landlord informing him that the Society is a sub-tenant of the suit premises and is paying rent to the State Government who, in turn, remits the rent to the petitioners. Consequent to the letter dated 03/12/1992 by the respondent Nos. 1 to 3 calling upon the Society to pay rent directly to the landlord, the rent was remitted to the landlord directly by the Society but the same was refused to be accepted by the petitioners. It is their further case that the claim of the petitioners that the purpose for which the property was requisitioned no more exists is not true and consequent to the amendment Act of 1997, the status of a deemed tenant in relation to the said

premises has been conferred upon them, and therefore, the petitioners are not entitled to seek the relief of the nature asked for and that too in writ jurisdiction.

5. The learned advocate appearing on behalf of the petitioners submitted that the fact that the premises were requisitioned in terms of provisions of the Bombay Land Requisition Act, 1948 for the purpose of use thereof for storage of grain and rationing material is not in dispute. It is also not in dispute that for last many years, the respondent No.4 is in occupation of the premises without any allotment order in their favour from the Government. It is also not in dispute that there are arrears of rent as the same having not been paid since August, 1983 on wards. According to the learned advocate for the petitioners, the respondent No.4 is not entitled to claim any protection under the Rent Act as it was not a government allottee in possession of the premises on 07/12/1996 and, in that connection, has sought to rely upon the unreported decision of Division Bench of this Court in the case of Tata Housing Development Co. Ltd and anr. vs. The State of Maharashtra and Ors delivered in Writ Petition No.1666 of 1996 on 19/09/2005 as also the decision of the Apex Court in

the case of Grahak Sanstha Manch & Others Vs. The State of Maharashtra reported in **1995(1) Bom. C.R. 295** and in the case of Welfare Assocn.A.R.P. Maharashtra and another v. Ranjit P. Gohil and others reported in **AIR 2003 SC 1266**.

6. The learned Additional Government Pleader appearing on behalf of respondent Nos. 1 to 3 submitted that the Government's stand in the matter has been made abundantly clear by the affidavit filed by the Joint Secretary to the Government on 07/10/2005 and, therefore, submitted that the Court should take into consideration the facts stated therein while disposing of the matter. It was, however, fairly admitted that the respondent No.4 is not the original allottee and the premises in question are not being used for the purpose for which they were originally requisitioned and this has been clearly stated in the affidavit.

7. The learned advocate for the respondent No.4 submitted that since inception the premises are being used by the Society to whom the premises were allotted by the respondent Nos. 1 to 3 for running the grain shop as well as for conducting pre-primary and primary school. The fact that the premises are in lawful

occupation of the respondent No.4 also finds confirmation from the affidavit filed on behalf of the Government wherein it has been clearly admitted that the premises were given by the Government to the Society. He further submitted that the Society had been paying rent to the respondent Nos. 1 to 3 and, consequently, lease-hold rights have been created in favour of the respondent No.4 and this fact was also confirmed by the said respondents in their letter dated 19/03/1990 addressed to the petitioner. Referring to Maharashtra Amendment Act 16 of 1997, the learned advocate submitted that the said amendment Act clearly provided that those who were in occupation of the requisitioned premises and continued to be so on 7/12/1996 were deemed to be lessee under the said Act. While in relation to the non-residential premises, the Government was declared to be the tenant and as the Government had created a lease in relation to the suit premises in favour of the Society, the said Society consequently acquired a status of sub-tenant and, therefore, is entitled for necessary protection available under the Rent Act in force in the State and, on that count, the petitioner is not entitled to seek eviction of the respondent No.4 from the suit premises by way of Writ Petition. The remedy, if any, would lie under the Rent Act through a court competent

to deal with those matters.

8. In the course of the hearing of the matter, an attempt was made on behalf of the Society through its advocate to file an affidavit in the matter to address the court on behalf of the Society. However, considering the fact that the Society is neither a party to the petition nor any intervention by the Society being asked for or granted, the question of allowing the Society to file an affidavit or giving an opportunity to the Society of being heard in the matter does not arise and hence neither the affidavit was accepted nor the advocate was permitted to address on behalf of the Society.

9. Upon hearing the learned advocate for the parties and on perusal of record it is apparent that the fact that the premises in question were requisitioned by the Government prior to 1949 in terms of the Bombay Land Acquisition Act, 1948 is not in dispute. So also, as rightly submitted by the learned advocate for the petitioner, it is not in dispute that the requisition of the premises was for the purpose of storage of grains by the Controller of Civil Supplies of the Government. It has also been admitted on behalf of the Government that, after 1950, the

Rationing Shop was given to the Sarvodaya Womens Industrial Co-operative Society. A feeble attempt was made on behalf of respondent Nos. 1 to 3 to contend that the said Society is a necessary party to the proceedings. It is, however, also not in dispute that since inception i.e. since 1957 onwards the premises in question are also used for conducting pre-primary and primary school. Simultaneously, it is also not in dispute that much prior to filing of the Petition and since long, the premises are not being used for storage of grains or by the Controller of Civil Supplies of the Government. The respondent Nos. 1 to 3, however, have not disclosed as to since when the premises ceased to be used for storage of grains, while disclosing the fact that, after 1950, the Rationing Shop was given to the Society. At the same time, as already observed above, the fact that the premises are used for different purposes i.e. for conducting school classes is not disputed. In other words, since 1950, the premises are not being used by the allottee of the Government and since long back and much prior to the filing of the petition, the premises are not being used for storage of grains have clearly been established from the facts on record and both these facts are not disputed.

10. It was strenuously argued by the learned advocate appearing on behalf of the respondent No.4 that the respondent No.4. is in possession of the premises as the agent of the Society and the Society is the allottee of the Government. Neither any order of allotment in favour of the Society has been produced on record nor any other document in the name of respondent Nos. 1 to 3 confirming such a status of the Society or the respondent No.4 in relation to the suit premises has been placed on record. The statement sought to be made in the affidavit-in-reply filed on behalf of respondent No.4 that the Society, apart from running the grain shop in the suit premises, has been conducting pre-primary and primary school is not being supported by any material to the extent it relates to the running of grain shop as well as regarding claim that pre-primary and primary school is being run by the Society. On the contrary, the statement in the affidavit apparently discloses that the school classes are run and managed by the respondent No.4 - Trust. In other words, the respondent No.4 is in possession of the premises and is conducting classes therein has been clearly admitted by the respondent No.4 and not disputed by the respondent Nos.1 to 3.

11. It was sought to be argued on behalf of the respondent No.4 that the fact that the premises have been allotted in favour of the Society has been clearly admitted by the Government in the affidavit filed on their behalf. The contention is totally devoid of substance. Undoubtedly, there is a statement in the affidavit filed on behalf of the Government to the effect that, "After 1950 the said Rationing Shop was given by the Government to Sarvodaya Womens Industrial Co-operative Society as recorded in the G.R. dated 25th March, 1975." At the same time, in the next para i.e. in para No.3 of the said affidavit, it has been stated on behalf of the Government that, "Respondent No.4 is not the original allottee and the purpose for which it was allotted i.e. for storage of food grains is not carried out by the present Respondent No.4". The first statement which relates to giving of Rationing Shop to the Society nowhere discloses allotment of the premises as such in favour of the Society. It merely shows that the Rationing Shop was given to Society. Giving of Rationing Shop is different from allotment of the premises. The affidavit nowhere discloses the nature of understanding which might have been arrived at between the Society and the Controller of Civil Supplies who is the authority to deal with the subject

relating to Rationing Shops. The authority to deal with the allotment of premises vests with the Controller of Accommodation and not with the Controller of Civil Supplies. That being the position and there being no statement to the effect that the allotment of the premises or even the premises having been given to the Society, by no stretch of imagination it can be said that there is allotment of the premises in favour of the Society on behalf of respondent Nos. 1 to 3. That apart, the immediate next statement in the affidavit which clearly discloses that respondent No.4 is neither an allottee nor uses the premises for the purpose for which it was requisitioned, discloses the stand on behalf of respondent Nos. 1 to 3 to the effect that respondent No.4 who is in occupation of the premises is not the Government allottee in relation to the premises in question.

12. As regards the amendment Act, undoubtedly, section 5(1A) to the Bombay Rent Hotel and Lodging House Rates Control Act, 1947 which was amended by the said amendment Act provides that in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any department or office of

the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 (Mah XXIV of 1961) or any foreign consulate, by whatever name called, and on the date of coming into force of the said amendment Act, are allowed by the State Government to remain in their occupation and possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate, and section 15B bestows the status of tenant on such government allottee. In other words, in case of non-residential premises which were allotted by the State Government to any department or society and if in case such department or society continued to be in occupation of the premises on 7/12/1996 would be a government allottee for the purpose of the Rent Act and would, obviously, enjoy the protection available under section 15B of the Rent Act. In order to avail the necessary protection under the Rent Act, therefore, one had to continue to be an allottee in possession of the requisitioned premises on 7/12/1996. As already observed above, there is no document disclosing allotment of the premises by the State Government

either in favour of the society or respondent No.4. Section 5(1A)(a) does not speak of allotment by any unauthorized body or office but it has to be by the State Government through the Officer authorized to allot the premises on behalf of the State Government. Merely because some officer of some department in the correspondence refers to such person or department to be the government allottee that itself will not make either such department or person to claim to be the government allottee. In order to acquire the right to claim to be the government allottee, the allotment has to be in accordance with the provisions of law dealing with the rules of allotment of the requisitioned premises and unless that is established, the department or a person cannot claim to be the government allottee. In the case in hand, the respondent No.4 has not been able to produce on record any material to disclose allotment of premises either in favour of respondent No.4 or in favour of the society. Once no such allotment is established, merely because such person or department continued to be in requisitioned premises on 7/12/1996 that itself will not enure to the benefit of such department or a person to claim to be the government allottee.

13. It is curious to note that on one hand the

respondent No.4 claims to be the agent of the society who is alleged to be the government allottee while, on the other hand, the respondent No.4 claims to be a sub-tenant and that too on the strength of a letter dated 19/03/1990. A copy of the said letter which is placed on record by the respondent No.4 alongwith the affidavit discloses that the said letter was written by one Shri S.G. Garode, Section Officer of the Industry, Energy and Labour Department of the Government of Maharashtra. The said letter, on the face of it, nowhere discloses to have been written on behalf of the Government. It is not understood as to what credibility can be given to the said letter which, on the face of it, nowhere discloses to have been written on behalf of the Government nor it discloses any lease having been created by the Government nor it discloses the authority by whom such lease-hold rights having been assigned in favour of the society or the respondent No.4. Being so, merely on the basis of the said letter, the respondent No.4 is not entitled to claim any lease-hold rights either in its favour or in favour of the society.

14. Once it is apparent that there is no allotment of the premises in favour of the society nor the society is in possession of the premises and the premises are

in possession of the respondent No.4 and who is made party to the proceedings, the question of joinder of the said society as party to the proceedings does not arise at all. Hence, there is no substance in the contention sought to be raised on behalf of the respondent No.4 about the necessity of the society being party to the proceedings. The presence of society would neither help the Court in deciding the issue either effectively or finally nor it can help in adjudicating any of the issues sought to be raised in the matter. Being so, the society is neither necessary nor even a proper party to the proceedings.

15. Once it is apparent that the premises were requisitioned under the Bombay Land Requisition Act, 1948 and the purpose for which the premises were requisitioned cease to exist, it was the duty and obligation of the Government to return the vacant possession thereof to the owner. The law on this point is well settled as the power to requisition cannot be exercised to retain the premises requisitioned for indefinite period. The requisition is always a temporary arrangement and not a permanent affair. Once the Government in its affidavit has clearly admitted that the premises are not being used for the purpose for which they were requisitioned, it

is clearly established that the premises are no more required to be under requisition by the Government. Once it is also clearly established that the premises are not to be used by the Government even for any other purpose, the question of premises being allowed to remain under requisition does not arise at all.

16. Once the respondent No.4 has not been able to disclose the valid allotment of the premises in its favour prior to 7/12/1996 nor any other independent right having been accrued in its favour in relation to the premises and the premises continued to be a requisitioned premises on the said date, the question of the respondent No.4 being a government allottee does not arise nor the protection under the Rent Act is available to the respondent No.4. In the circumstances, therefore, the petitioners are justified in contending that the premises continued to be requisitioned premises and the only remedy which is available to the petitioners is under writ jurisdiction for direction to respondent Nos. 1 to 3. The question of driving the petitioner to any other court under the provisions of the Rent Act in force in the State does not arise atall. Once the premises are requisitioned by the Government, it is also an obligation of the Government to clear the dues in

relation to such premises. Merely because the Government on its own decides to allow its allottees to pay the rent directly to the landlord that would not create an independent relationship between the owner and such allottee in relation to the suit premises. In fact, it is exactly on that count the amendment was brought about to the Rent Act as well as the Land Requisition Act. But for such amendment there would be no relationship between such person or department in occupation of the requisitioned premises and the owner of the premises. However, for that purpose the occupant has necessarily to be the government allottee. Apart from the government allottee, no other person or department can claim any protection under the Rent Legislation. Being so, the arrears in relation to the premises will be the obligation of the Government. Undoubtedly the Government would be entitled to recover the same from the person who is in occupation of the premises.

17. For the reasons stated above, therefore, the petition succeeds abd is allowed and the rule is made absolute in terms of prayer clauses (a) and (b) with no order as to costs. Order accordingly.

18. At this stage, the learned advocate for respondent No.4 prays for stay of the order passed today in the matter. The same is opposed by the petitioners. We, however, are inclined to grant stay for a period of 8 weeks.

(R.M.S.KHANDEPARKAR, J.)

(V.M. KANADE, J.)